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Definition of Solid Waste Compendium

Volume S: Case-by-Case Variances and Non-waste Determinations

U.S. Environmental Protection Agency
Office of Resource Conservation and Recovery
Materials Recovery and Waste Management Division

Navigation Tips

To improve document navigation:

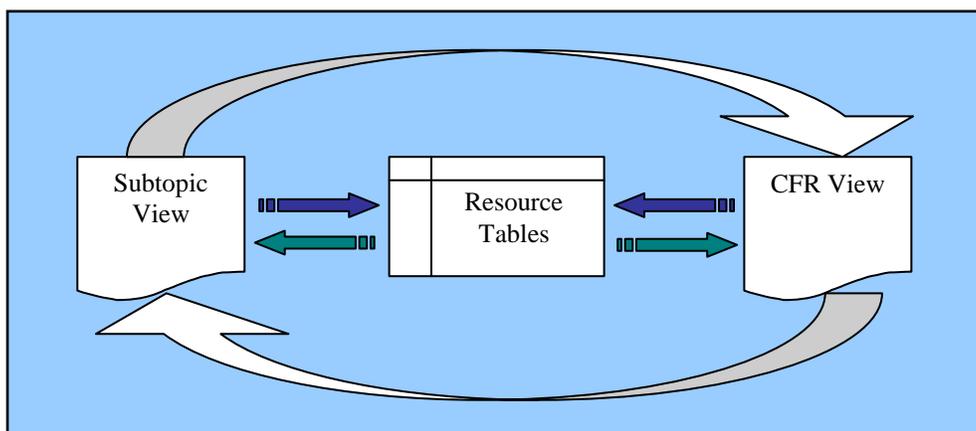
Using Microsoft Word

1. Use the  (back) and  (forward) buttons to navigate between document locations accessed via hyperlinks. These buttons can be accessed from the Navigation toolbar (View > Toolbars > Navigation). Alternatively, use ALT + Left (back) and ALT + Right (forward).
2. Use the Document Map. To show the Document Map, go to View > Document Map.

Using Adobe Reader (PDF)

1. Use the  (back) and  (forward) buttons to navigate between document locations accessed via hyperlinks. These buttons are found on the Navigation bar at the bottom of the document window.
2. Use the Bookmarks listed in the Bookmarks tab (located on the left-hand side of the document window).

Document Layout (arrows represent hyperlinks):



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Introduction

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About the Compendium

The Definition of Solid Waste Compendium serves as a user-friendly reference to assist Environmental Protection Agency (EPA) and state staff, industrial facilities generating and managing solid and hazardous wastes, as well as the general public, in locating resources addressing specific regulatory issues within the federal Definition of Solid Waste regulations. Please note that this reference is designed to be web-based; therefore, the usefulness of the document is maximized when it is viewed on a computer that is connected to the internet.

A frequently mentioned comment from stakeholders is the need for EPA to improve the user-friendliness of the existing regulations. Commenters note that the applicable Definition of Solid Waste regulations and relevant guidance materials are difficult to locate and use. As a result, stakeholders have difficulty in understanding the regulations and identifying solid waste. The objective of this document is to address some of the commenters' concerns by consolidating and streamlining the Definition of Solid Waste into a helpful reference tool that features a user-friendly format, including references to EPA FAQs (Frequently Asked Questions), letters, memoranda, and guidance documents that EPA has provided to the public through the years to help stakeholders interpret the Definition of Solid Waste. This document does not change any of the existing solid or hazardous waste requirements.

The resources referenced in the Compendium may include Federal Register (FR) notices, documents from [Resource Conservation and Recovery Act \(RCRA\) Online](#) (e.g., RCRA Hotline Q&A's, letters, and memoranda issued by EPA), and other resources, as well as relevant Code of Federal Regulations (CFR) language. We have attempted to identify the relevant resources for each Compendium volume topic. However, please note that EPA could have inadvertently overlooked a relevant document and did not reference it. Certain available resources, such as superseded RCRA Online documents and items that were judged to be not pertinent, have not been referenced. Most of the referenced resources are not included or reproduced in the Compendium; instead, hyperlinks to the resources are provided. As an exception, we have included a version of relevant sections of the most current CFR language (as of the date on the cover of the Compendium) that we have reformatted to make it easier to read and find citations of interest. In addition, we also provide links to the [Government Printing Office's Electronic Code of Federal Register Web site](#) (e-CFR), which is updated almost daily.

Please note that this document is also not a rulemaking in any way. As well, the included reformatted CFR language is not a substitute for the CFR itself or the requirements in the CFR. The Government Printing Office frequently updates the e-CFR

Web site; where appropriate, hyperlinks to the respective CFR section at the e-CFR Web site are provided.

This reference document presents only the federal Definition of Solid Waste. Most states are authorized to manage their own solid and hazardous waste generator regulatory program. Therefore, states may have their own set of regulations that apply in lieu of federal regulations, and while most state solid and hazardous waste regulations are based on the federal requirements, some states have developed regulations more stringent than the federal program. We direct you to the following Web site to determine if the state regulatory program is different from the federal program:

<http://www.epa.gov/epawaste/wyl/stateprograms.htm>.

The Definition of Solid Waste includes multiple subtopics, and is codified under 40 CFR. To help users of the Compendium more quickly identify the information they need, and to make the Compendium more user-friendly in an electronic environment, the Compendium has been divided into multiple volumes. These volumes are available through EPA's Definition of Solid Waste Web site at <http://www.epa.gov/epawaste/hazard/dsw/compendium.htm>. Because regulations are promulgated throughout the year, EPA intends to update the Compendium volumes periodically to remain up-to-date with regulations relating to the Definition of Solid Waste.

About the Case-by-Case Variances Volume

This volume of the Compendium references resources pertaining to specific case-by-case variances from the Definition of Solid Waste. These variances are provided under 40 CFR 260.30 and 260.31.

This document is organized into three main sections:

- *Subtopic View* – lists subtopics for resources
- *Resources* – lists resources for each subtopic
- *CFR View* – CFR language we've reformatted for easy reading

The *Subtopic View* section lists the subtopics among the case-by-case variances resources. The *Resources* section is comprised of a table, arranged by subtopic, that provides basic details about and a hyperlink to each resource. The *CFR View* section provides reformatted versions of the relevant CFR language. As noted previously, this reproduced language is not a substitute for the CFR itself or the requirements in the CFR. Additionally, the Government Printing Office frequently updates the e-CFR Web site to which the document is linked; where appropriate, hyperlinks to the respective CFR section at the e-CFR Web site are provided. These three main sections are cross-referenced, where each section includes hyperlinks to the other sections. Please see the "Navigation Tips" section for document navigation guidance.

This reference document does not provide guidance on solid waste or hazardous

waste regulations beyond issues relating to the case-by-case variances from the Definition of Solid Waste. For more information regarding the various regulations applied to facilities generating or managing hazardous waste, see [Hazardous Waste Generators: A User Friendly Reference Document](#).

The Compendium volumes are also available in Microsoft Word format from EPA upon request. For more information on these versions and any other questions or comments concerning this document, please contact EPA's Office of Resource Conservation and Recovery:

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Subtopic View

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Case-by-Case Variances and Non-waste Determinations [§§260.30, 260.31, 260.33, 260.34]

Resource Index:

- [Resources applicable to all subtopics](#)
- Resources specific to subtopic:
 - [Lead smelters](#)
 - [Reclamation](#)
 - [Reuse](#)
 - [Solvents](#)
 - [Other](#)

Resources by Subtopic

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Subtopic	Resource	Document Date	Type	Topic is Focus?	Link to EPA Summary	Link to Resource
Resources applicable to all subtopics	1. 50 FR 614 - Hazardous Waste Management System (Final) [pp. 634, 654-655]	1/4/1985	Federal Register	Yes	N/A	PDF
	2. 59 FR 47982 - Modifications to Hazardous Waste Recycling Regulations (Final) [pp. 48014-48015]	9/19/1994	Federal Register	Yes	N/A	PDF
	3. 67 FR 52617 - Variance from EPA's hazardous waste requirements for certain materials reclaimed from metal-bearing sludges (Final) [All pages]	8/13/2002	Federal Register	Yes	N/A	PDF
	4. 71 FR 16862 - Resource Conservation and Recovery Act Burden Reduction Initiative (Final) [p. 16893]	4/4/2006	Federal Register	Yes	N/A	PDF
	5. 72 FR 14172 – Revisions to the Definition of Solid Waste (Supplemental Proposed) [pp. 14201-14205]	3/26/2007	Federal Register	Yes	N/A	PDF
	6. 73 FR 64668 – Revisions to the Definition of Solid Waste (Final) [pp. 64679, 64710- 64713, 64750-64753]	10/30/2008	Federal Register	Yes	N/A	PDF (64668-64716) PDF (64717-64766) PDF (64767-64788)
	7. §260.30 - Non-waste determinations and variances from classification as a solid waste	N/A	Code of Federal Regulations	Yes	N/A	e-CFR
	8. §260.31 - Standards and criteria for variances from classification as a solid waste	N/A	Code of Federal Regulations	Yes	N/A	e-CFR
	9. §260.33 - Procedures for variances from classification as a solid waste, for variances to be classified as a boiler, or for non-waste determinations.	N/A	Code of Federal Regulations	Yes	N/A	e-CFR

Subtopic	Resource	Document Date	Type	Topic is Focus?	Link to EPA Summary	Link to Resource
	10. §260.34 - Standards and criteria for non-waste determinations.	N/A	Code of Federal Regulations	Yes	N/A	e-CFR
Return to: Subtopic View CFR View (CFR text) Main Index						
Lead smelters	1. SECONDARY LEAD SMELTER VARIANCES	8/26/1988	Memo	Yes	Summary	PDF
Return to: Subtopic View CFR View (CFR text) Main Index						
Reclamation	1. SOLID WASTE VARIANCE	9/1/1985	Q & A	Yes	Summary	PDF
	2. RECLAMATION OF SPENT ALKALINE ETCHANT-REQUEST FOR VARIANCE UNDER MOD. CLOSED-LOOP PROVISION	10/29/1985	Letter	Yes	Summary	PDF
	3. SECONDARY LEAD SMELTER VARIANCES	8/26/1988	Memo	Yes	Summary	PDF
	4. VARIANCES FROM CLASSIFICATION AS A SOLID WASTE UNDER 40 CFR 260.31(b) FOR SPENT CATALYSTS	11/15/1994	Memo	Yes	Summary	PDF
	5. REGULATORY INTERPRETATION REGARDING THE VARIANCE FROM THE DEFINITION OF SOLID WASTE AT 40 CFR 260.31(b)	3/3/1999	Letter	Yes	Summary	PDF
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Reuse	1. SOLID WASTE VARIANCE	9/1/1985	Q & A	Yes	Summary	PDF
	2. RECLAMATION OF SPENT ALKALINE ETCHANT-REQUEST FOR VARIANCE UNDER MOD. CLOSED-LOOP PROVISION	10/29/1985	Letter	Yes	Summary	PDF
	3. VARIANCES FROM CLASSIFICATION AS A SOLID WASTE UNDER 40 CFR 260.31(b) FOR SPENT CATALYSTS	11/15/1994	Memo	Yes	Summary	PDF
Return to: Subtopic View CFR View (CFR text) Main Index						
Solvents	1. SOLID WASTE VARIANCE	9/1/1985	Q & A	Yes	Summary	PDF

Subtopic	Resource	Document Date	Type	Topic is Focus?	Link to EPA Summary	Link to Resource
	2. REGULATORY INTERPRETATION REGARDING THE VARIANCE FROM THE DEFINITION OF SOLID WASTE AT 40 CFR 260.31(b)	3/3/1999	Letter	Yes	Summary	PDF
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<i>Other</i>	1. RECOGNITION OF A STATE VARIANCE FROM THE DEFINITION OF SOLID WASTE BY ANOTHER STATE	9/1/2004	Q & A	Yes	Summary	PDF
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CFR View Index

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NOTE: The CFR links in the below index are internal to this document.

CFR Location	Title/Topic
260.30	Variances from classification as a solid waste
260.31	Standards and criteria for variances from classification as a solid waste
260.33	Procedures for variances from classification as a solid waste, for variances to be classified as a boiler, or for non-waste determinations.
260.34	Standards and criteria for non-waste determinations.

CFR View

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NOTE: The CFR language outline has been formatted

§260.30: Variances from classification as a solid waste.

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In accordance with the standards and criteria in §260.31 and the procedures in §260.33, the Administrator may determine on a case-by-case basis that the following recycled materials are not solid wastes:

- (a) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in §261.1(c)(8) of this chapter);
- (b) Materials that are reclaimed and then reused within the original production process in which they were generated; and
- (c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

§260.31: Standards and criteria for variances from classification as a solid waste.

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(a) The Administrator may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Administrator's decision will be based on the following criteria:

- (1) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);
- (2) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;
- (3) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;
- (4) The extent to which the material is handled to minimize loss;
- (5) Other relevant factors.

§260.31: Standards and criteria for variances from classification as a solid waste (cont.).

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(b) The Administrator may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

- (1) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;
- (2) The extent to which the material is handled before reclamation to minimize loss;
- (3) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;
- (4) The location of the reclamation operation in relation to the production process;
- (5) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;
- (6) Whether the person who generates the material also reclaims it;
- (7) Other relevant factors.

(c) The Regional Administrator may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

- (1) The degree of processing the material has undergone and the degree of further processing that is required;
 - (2) The value of the material after it has been reclaimed;
 - (3) The degree to which the reclaimed material is like an analogous raw material;
 - (4) The extent to which an end market for the reclaimed material is guaranteed;
 - (5) The extent to which the reclaimed material is handled to minimize loss;
 - (6) Other relevant factors.
-

§260.33: Procedures for variances from classification as a solid waste, for variances to be classified as a boiler, or for non-waste determinations.

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The Administrator will use the following procedures in evaluating applications for variances from classification as a solid waste, applications to classify particular enclosed controlled flame combustion devices as boilers, or applications for non-waste determinations.

- (a) The applicant must apply to the Administrator for the variance or non-waste determination. The application must address the relevant criteria contained in §260.31, §260.32, or §260.34, as applicable.
- (b) The Administrator will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The Administrator will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The Administrator will issue a final decision after receipt of comments and after the hearing (if any).
- (c) For non-waste determinations, in the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in §260.34 upon which a non-waste determination has been based, the applicant must re-apply to the Administrator for a formal determination that the hazardous secondary material continues to meet the relevant criteria and therefore is not a solid waste.

§260.34: Standards and criteria for non-waste determinations.

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(a) An applicant may apply to the Administrator for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in paragraphs (b) or (c) of this section, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under §260.31). Determinations may also be granted by the State if the State is either authorized for this provision or if the following conditions are met:

- (1) The State determines the hazardous secondary material meets the criteria in paragraphs (b) or (c) of this section, as applicable;
- (2) The State requests that EPA review its determination; and
- (3) EPA approves the State determination

(b) The Administrator may grant a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in §260.43 and on the following criteria:

- (1) The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;
- (2) Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);
- (3) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and
- (4) Other relevant factors that demonstrate the hazardous secondary material is not discarded.

(c) The Administrator may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in §260.43 and on the following criteria:

- (1) Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);
- (2) Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;
- (3) Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);
- (4) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; a

(5) Other relevant factors that demonstrate the hazardous secondary material is not discarded.

*****End of Case-by Case Variances CFR Excerpts *****

Glossary of Acronyms

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Acronym	Meaning
CFR	Code of Federal Regulations
e-CFR	electronic Code of Federal Regulations
EPA	Environmental Protection Agency
FR	Federal Register
RCRA	Resource Conservation and Recovery Act